



CNR: KAHC010169792020

NC: 2026:KHC:40738-DB
CRL.A No. 768 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 768 OF 2020 (C)

BETWEEN:

BASAPPA DURGAPPA MASTHMARADI
@ BASU
AGED ABOUT 40 YEARS,
S/O LATE DURGAPPA LABOUR,
R/O VALMIKI SCHOOL,
YARZARVI VILLAGE,
SAVADATHI TALUK,
BELGAUM DISTRICT-591 126.

...APPELLANT

(BY SRI. DESHPANDE AMIT ANAND, ADVOCATE (PH))

AND:

STATE OF KARNATAKA
BY CIRCLE INSPECTOR OF POLICE,
KAPU POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT UNIT,
DR. AMBEDKAR VIDHI,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. RANJITH KUMAR N., HCGP (PH))





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THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO:
(1) CALL FOR RECORDS IN S.C.NO.61/2013 IN THE FILE OF
PRINCIPAL SESSIONS JUDGE, UDUPI; (2) EXAMINE THE SAME
AND TO SET ASIDE THE IMPUGNED ORDER OF JUDGMENT AND
CONVICTION DATED 14.08.2019 PASSED BY THE PRINCIPAL
SESSIONS JUDGE, UDUPI IN S.C.NO.61/2013 IN AWARDING
LIFE SENTENCE TO THE ACCUSED AND IMPOSING FINE OF
RS.5,000/- BY ORDER DATED 16.08.2019 BY HONOURABLY
ACQUITTING THE ACCUSED/APPELLANT OF THE SAID
CHARGES OF OFFENSES PUNISHABLE UNDER SECTION 302
R/W SECTION 34 OF IPC BY ALLOWING THIS APPEAL WITH
EXEMPLARY COSTS.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

This appeal is directed against the Judgment and
Order of conviction and sentence passed by the Court of
Sessions Judge, Udupi District, Udupi, in Sessions Case
No.61/2013.

2. The trial Court, vide impugned judgment dated
14.8.2019 has convicted accused No.1 for the offence
punishable under Section 302 IPC and vide Order dated



CNR: KAHC010169792020

16.8.2019 has sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to pay the fine, to undergo SI for 6 months.

3. Brief facts of the case:

The first informant-Dolphy D'Souza (PW1), was working as a Garden Supervisor at Nagarjuna Power Plant Site under one Denis D'Souza (PW2). PW3-Ravindranath Yadav was also working as a supervisor in the said plant site. There were four male and four female labourers engaged in maintaining the garden. Since they were in need of more labourers, PW2 had requested some other people to send the labourers for work. On 24.08.2013, in the afternoon, accused Nos.1 and 2 and the deceased Sharanappa came to Nagarjuna Labour Colony to work in the site. They were asked to occupy Room No.C-6 and to come for work on the next day. Since they did not turn up for work, PW1 went to Room No.C-6 of the Labour Colony at about 8.30 a.m., on 26.08.2013 and found that the



door was closed. When he peeped through the window, he saw one of the labourers, namely Sharanappa lying dead with bleeding injuries on his head and face, with a stone near his leg.

4. It is the case of the prosecution that deceased Sharanappa had obtained hand loan from accused No.1 and accused No.2 had also obtained a loan of Rs.500/-. Accused No.2 had returned a sum of Rs.200/-, but deceased had not returned the money. Therefore, there used to be quarrel between them. On 25.08.2013, a quarrel ensued between them, when the deceased refused to return the amount. In the night, at about 10.00 p.m., the deceased objected to the accused for not having cooked food on that night. Hence, when the deceased was sleeping, both the accused committed his murder by dropping a size stone on his head, chest, face etc.

5. During the pendency of trial, before framing the charge, accused No.2 died. Hence, the case against him



CNR: KAHC010169792020

was abated. Trial was conducted against accused No.1. The prosecution got examined 20 witnesses and got marked 31 documents and 19 material objects. On behalf of the defence, a portion of the statement of PW2 was got marked as Ex.D1.

6. The learned trial Judge, vide impugned Judgment and Order, convicted and sentenced accused No.1 for the offence punishable under Section 302 r/w 34 of IPC, which is assailed in this appeal.

7. It is the specific case of the prosecution that the deceased had borrowed a sum of Rs.500/- from accused No.1 and he had not returned the said amount. Hence, there used to be quarrel between the accused and the deceased. Further, on the date of incident i.e., on the night of 25.08.2013, the deceased quarrelled with the accused as they had not prepared the food for dinner. Hence, both the accused committed his murder by dropping a size stone on his head, face and chest etc.



CNR: KAHC010169792020

NC: 2026:KHC:40738-DB
CRL.A No. 768 of 2020

8. The entire case is based on circumstantial evidence. The prosecution is mainly relying on the fact that the accused and deceased were staying together in shed No.C-6, which was allotted to them by PW1, the seizure of a bag containing the blood stained clothes of the deceased, recovery of mobile phone of the deceased from accused No.1, the motive for the offence and the homicidal death.

9. Insofar as the homicidal death is concerned, the prosecution has got marked the post mortem report as Ex.P21, wherein it is seen that the cause of death is on account of crush injury of the head, secondary to blunt force trauma. As many as 14 injuries were noticed on the dead body. At the time of conducting spot mahazar, a size stone was seized which was lying near the dead body. The doctor, who conducted the post mortem examination is examined as PW14. He has opined that the stone which was examined by him can cause the death of a person, when used as a weapon of offence and further opined that



the external injuries mentioned under cranium of the P.M. report can be caused by the said stone. Hence, we have no hesitation to hold that the prosecution has proved that the death of Sharanappa is homicidal in nature.

10. Insofar as the accused and deceased staying in Shed No.C-6 is concerned, the prosecution has placed reliance on the evidence of PW1, PW2, PW3, PW11 and PW13. PW1 is the defacto complainant. He has deposed that on 24.08.2013, three persons were brought by CW3 (PW3) and they were allotted room No.C-6 in the shed. He has only stated that they were asked to come on 26.08.2013 but they did not turn up. When he went to the shed at about 8.30 a.m., he saw the dead body of one of them and the other two were missing. His evidence does not indicate that he has identified accused Nos.1 and 2 as the persons who had come along with the deceased. His further evidence with regard to accused No.1, confessing about committing the murder, is not admissible in evidence since that was after the arrest of the accused and



CNR: KAHC010169792020

the confession was allegedly made in the presence of the Police.

11. PW2 has stated that he was asked by PW3 to get some labourers and therefore, he had brought Sharanappa, Basappa and Sangayya i.e., deceased and accused Nos.1 and 2. They occupied shed No.C-6 and thereafter, on 26.08.2013 at about 8.15 a.m., PW1 informed him over phone that the said persons did not turn up for work and therefore, he went near the shed, where he saw the dead body of Sharanappa. Similar is the evidence of PW3.

12. According to PW11 and PW13, co-labourers, the accused and the deceased were quarreling and on the next day, Sharanappa was found dead in the shed and the accused were not present there.

13. The learned High Court Government Pleader vehemently contended that from the evidence of the above witnesses, the prosecution has been able to show



that the deceased and the accused had come for work on 24.8.2013 and they were allotted shed No.C-6 but they did not turn up for work. On the other hand, on 26.8.2013, Sharanappa was found dead inside the shed and the accused were found missing. He contended that the above witnesses namely PWs.1 to PW3, PW11 and PW13 have seen the deceased in the company of both the accused prior to the incident and the appellant/accused No.1 was found missing since then and therefore, this is a very strong circumstance against him.

14. It is contended by the learned counsel for the appellant that the prosecution has failed to prove the motive for the appellant to commit the murder, as none of the witnesses have spoken about the accused quarrelling with the deceased for the purpose of money and also quarrelling on the date of incident, for not preparing the food. He further contended that only on the sole circumstance i.e., last seen, the accused cannot be convicted for a serious charge of murder and another



CNR: KAHC010169792020

circumstance relied upon by the prosecution i.e., recovery of blood stained clothes of the deceased, was at the instance of accused No.2 and not at the instance of the appellant/accused No.1. He, further contended that the mobile phone allegedly recovered at the instance of the appellant, is not established beyond reasonable doubt. He has further contended that mere abscondence of the accused is also not a strong circumstance against the accused to convict him.

15. The learned counsel has relied on the judgments of the Hon'ble Apex Court in the case of i) **Smt. Gargi v. State of Haryana** (Crl.A.No.1046/2010, DD. 19.09.2019), **Anand Jakkappa Pujari @ Gaddadar v. The State of Karnataka** (Crl.A.No.1864/2024, DD. 27.4.2026) and **Sekaran v. The State of Tamil Nadu** (Crl.A.No.2294/2010, DD. 12.12.2023).

16. None of the witnesses examined by the prosecution have spoken about the motive for the accused



to commit the murder. The evidence of PWs.1 to PW3, 11 and 13, goes to show that the deceased along with the accused came to work as labourer in the site of Nagarjuna, wherein PW1 was working as a garden supervisor under PW2. According to prosecution, on 24.08.2013, they were asked to come for work but till 26.08.2013 they did not turn up and therefore, PW1 went to shed No.C-6, which was allotted to them and found the dead body of Sharanappa. PW5 and PW6 have spoken about the accused and deceased consuming alcohol in a bar and restaurant.

17. There are no eye witnesses to the incident in question. Even though the evidence of the above witnesses goes to show that both accused Nos.1 and 2 along with the deceased stayed in the shed and the dead body of Sharanappa was found on the morning of 26.04.2013 and accused Nos.1 and 2 were missing, that itself will not lead to a conclusion that both the said accused have committed the murder.



CNR: KAHC010169792020

18. As per prosecution, accused No.2 dropped the size stone (MO.7) on the head, face and accused No.1 dropped the stone on the chest of the deceased. The case against accused No.2 has been abated as he died during the pendency of the case before the Trial Court. Though there are 14 injuries noticed on the dead body and one injury is on the chest and below the neck, which according to the prosecution is caused by the appellant, admittedly, the stone was seized from the spot and not at the instance of the appellant.

19. The prosecution is relying on the recovery of bloodstained clothes of the deceased. PW6 is the owner of the Pan Shop, examined by the prosecution to prove the seizure of clothes of the deceased at the instance of the accused. However, according to PW6, it was accused No.2 who had kept the bag which contained the bloodstained clothes of the deceased. He has stated that, in the last week of August 2013 at about 10.30 pm, Sangayya i.e. accused No.2 had come to his Pan Shop and stating that



CNR: KAHC010169792020

he has to go to his village, urgently and kept his bag in his shop. Thereafter, he did not return for 2 months. On 18.11.2013 at 01.30 pm, the Police came along with the said accused to the shop and the said accused confessed to have committed the murder of Sharanappa by dropping a size stone on him. The Police, then seized the said bag containing the clothes of the deceased under Ex.P15. Hence, the said circumstance relied upon by the prosecution does not incriminate accused No.1.

20. Nextly, it is the case of the prosecution that, the mobile phone belonging to the deceased was seized at the instance of accused No.1 i.e., the present appellant. According to the prosecution, after the arrest of accused No.1, his voluntary statement was recorded as per Ex.P26 and the mobile phone produced by him was seized under a mahazar Ex.P8.

21. Accused No.1 was apprehended by PW8 on 10.09.2013. He was taken into custody on that day and



on the next day he was produced before the Investigation Officer, who seized the mobile phone from his possession. According to PW8, the accused confessed about committing the murder and also stated before him about the possession of the mobile phone belonging to the deceased. The said mobile phone was seized by PW18. According to the prosecution, the said mobile phone belonged to the deceased Sharanappa and after committing the murder, accused No.1 had taken that mobile phone.

22. The prosecution has examined PW12, son of the deceased, who identified the mobile phone. However, the IO has not stated that after the mobile phone was seized, it was shown to PW12 i.e., the son of the deceased and he identified the said mobile phone as belonging to his father. There is no material to show that the deceased was using the mobile phone/MO.15. None of the witnesses have spoken about the deceased using the said mobile phone, when he came to the site along with accused Nos.1 and 2.



CNR: KAHC010169792020

NC: 2026:KHC:40738-DB
CRL.A No. 768 of 2020

PW12, son of the deceased has stated in the cross-examination that he is not aware as to in whose name the mobile set was. Hence, it cannot be said that the prosecution has established beyond reasonable doubt that the mobile phone allegedly recovered from accused No.1, was the mobile phone of the deceased.

23. It is relevant to extract Para-69 of the judgment in the case of **ANAND JAKKAPPA PUJARI** (*supra*) relied upon by the learned Counsel for the appellant:

"69. Having reached the conclusion that the discovery evidence cannot be utilized against the appellants, we are now left with only one piece of incriminating circumstance and that is last seen together. We are of the view that it will be too much for us to affirm the conviction of the appellants for a serious offence like murder solely relying on the circumstance of last seen together. The prosecution has to prove its case beyond all reasonable doubt. The prosecution case "may be true" but it is not that of "must be true", and there is a long distance to travel between "may be" and "must be"."



CNR: KAHC010169792020

NC: 2026:KHC:40738-DB
CRL.A No. 768 of 2020

24. Further, it is also relevant to refer to Para-23 of the judgment of the Hon'ble Apex Court in the case of **SEKARAN (*supra*)** relied upon by the learned Counsel for the appellant, wherein it is observed that, "*Abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances*".

25. From the above discussion and for the aforesaid reasons, we are of the view that, the prosecution has failed to establish the guilt of the appellant/accused No.1 beyond reasonable doubt. The circumstances relied upon by the prosecution are not conclusive to hold that it is the appellant/accused No.1 who has committed the murder.



The appellant is entitled to benefit of doubt. Accordingly,
the following:

O R D E R

- i. Appeal is **allowed**.
- ii. The Judgment dated 14.08.2019 and Order on sentence dated 16.08.2019, passed by the Court of the Principal Sessions Judge, Udupi, in S.C.No.61/2013, convicting and sentencing the appellant/accused for the offence punishable under Section 302 of IPC, are hereby **set aside**.
- iii. Appellant/accused is acquitted of the charges levelled against him.
- iv. He is ordered to be set at liberty forthwith, if not required in any other case.



CNR: KAHC010169792020

**NC: 2026:KHC:40738-DB
CRL.A No. 768 of 2020**

v. The Registry shall communicate the operative portion of this Order to the concerned Jail authority.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

TL,DHA
List No.: 1 Sl No.: 14